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2. CHANCERY PRACTICE—*Report of commissioner—weight given.* The report of a commissioner in chancery, even where the evidence is conflicting, is not entitled to the weight of the verdict of a jury. The functions of a commissioner and of a jury are entirely different. Courts of chancery find and decide both the law and the facts; juries are the triers of the facts only.

3. CHANCERY PRACTICE—*Report of commissioner—weight given—exceptions—duty of court.* The report of a commissioner in chancery is *prima facie* correct, and objections to it must be raised by exceptions. When this is done it is the duty of the court to examine the evidence returned by the commissioner, and upon which his conclusions are based, and review his conclusions. If the evidence has not been taken by the commissioner, nor in his presence, the court has the same means of ascertaining the truth as the commissioner, and is more competent to pass on the evidence and draw correct conclusions. If the evidence consists of depositions and has been taken by the commissioner or in his presence, and is conflicting, and his conclusions are clearly supported by competent and unimpeached witnesses, his report will not be disturbed, unless it is clear that the weight of the testimony is contrary to his conclusions. But, even in such case, the court will review and weigh the evidence, and if not satisfied with the findings of the commissioner will overrule them. The report will only be accepted as conclusive when the testimony, though conflicting, is evenly balanced, and the report is supported by the testimony of competent and unimpeached witnesses.

4. CHANCERY PRACTICE—*Commissioner's report—final decree—motion under section 3451 of the Code.* Where a final decree has been entered in a cause confirming the report of a commissioner, without exception or objection, the appellate court will not reverse such decree for errors alleged in said report and not appearing on the face of it. And in a litigated case such errors cannot be corrected by the trial court on motion under section 3451 of the Code. This section provides for the correction of errors generally, on a judgment by default or bill taken for confessed, and for misprisons of the clerk, or clerical misprisons of the judge, where the judgment may be safely corrected in the manner prescribed by that section. It has no application to errors in the reasoning and conclusions of the court about contested matters.

5. JUDGMENT—*Presumption.* The judgment of a court of competent jurisdiction is presumed to be right until the contrary is shown. An appellate court will not overturn such judgment unless it is shown to be wrong.

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POWELL, WHITEHURST & CO. v. BERRY AND OTHERS.—Decided at Wytheville, June 27, 1895.—*Harrison, J.*:

1. CHANCERY PRACTICE—*Specific performance.* Application for the specific performance of a contract is addressed to the sound discretion of the court, and will not be granted unless the applicant shows that he has been ready, prompt and eager to perform the contract on his part. If he has been in default, a court of equity will leave him to such remedy as he may have in a court of law.

2. CHANCERY PRACTICE—*Rescission—cancellation.* An application to a court of chancery to rescind or cancel a contract for the sale of real estate, like that for

specific performance, is also addressed to the sound judicial discretion of the court, and the court not unfrequently refuses to rescind when, under like circumstances, it would refuse to enforce. Rescission, however, seems to be limited to cases where there is either a palpable and material mistake concerning the substance of the thing contracted for, or when fraud and misrepresentation have been perpetrated on the applicant.

3. CHANCERY PRACTICE—*Case at bar—specific performance—rescission—remedy at law.* Applying the foregoing principles to the case at bar the court will neither enforce nor rescind the contract, but remit the parties to such remedies as they may have at law.